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No. 09-786

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

EDWIN E. NAYTHONS,

Petitioner,

v.

STRADLEY, RONON,
STEVENS & YOUNG, LLP,
and ANDRÉ L. DENNIS, ESQUIRE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

JOSEPH C. CRAWFORD
Counsel of Record
ANDREA TOY OHTA
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

Attorneys for Respondents

227895

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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STATEMENT OF THE CASE

This case involves tort claims by Edwin E. Naythons ("Naythons"), a private arbitrator, against a law firm (Stradley, Ronon, Stevens & Young, LLP) and one of its partners (André L. Dennis, Esquire) (collectively "Stradley") based solely on petitions that Stradley filed in the Pennsylvania state courts on behalf of its client, Kenneth Shelton ("Bishop Shelton") seeking judicial review of certain decisions that Naythons made in connection with the arbitration. Naythons was an arbitrator in a highly contentious dispute between two church factions involving the leadership and assets of the church. *See* 3d Cir. J.A. 0038. Naythons has asserted abuse of process and wrongful use of civil proceedings claims against Stradley based solely on Stradley's petitions, which alleged arbitrator "misconduct, dishonesty, fraud and bias" and requested that the Pennsylvania state court order Naythons' recusal and vacate Naythons' arbitration adjudication. 3d Cir. J.A. 0062-0065.

Despite the narrow statutory grounds for overturning an arbitrator's award, *see* 42 Pa. C.S.A. § 7341, a Pennsylvania appellate court ultimately granted one of Stradley's vacatur petitions and vacated Naythons' initial adjudication and all subsequent adjudications and orders that Naythons issued in the arbitration. *See* 3d Cir. J.A. 1165-1166. Perhaps recognizing the absurdity of suing Stradley for pursuing judicial review of his arbitration decisions, especially when Stradley ultimately prevailed and persuaded a Pennsylvania appellate court to overturn his adjudications, Naythons has attempted to muddy the

waters by suggesting that his tort claims against counsel are based solely on the recusal petition and also by mischaracterizing the allegations contained in the recusal petition. Accordingly, Stradley will clarify and briefly summarize the recusal and vacatur petitions.

A. Recusal Petition

In August 2006, Stradley filed a petition in the Court of Common Pleas of Philadelphia County, Pennsylvania seeking Naythons' recusal. 3d Cir. J.A. 0052. Stradley sought recusal based on certain *ex parte* communications with opposing counsel and Naythons' unsupported assumption that the "majority faction" – a clear reference to Stradley's client Bishop Shelton and his supporters – were behind an anonymous threat against Naythons that was posted on an Internet social networking site, MySpace. 3d Cir. J.A. 0052, 0089-0118, 0638-0641. Stradley argued that the *ex parte* communications and Naythons' unfounded assumption, which Naythons expressed on the record during a conference in the arbitration case, raised serious questions as to Naythons' ability to act impartially and created (at the very least) the appearance of bias against Bishop Shelton. 3d Cir. J.A. 0095-0097, 0638-0641.

The recusal petition was based on allegations of bias. It did not contain any allegations of arbitrator misconduct, dishonesty, or fraud. 3d Cir. J.A. 0629-0641.

B. Petitions to Vacate

In November 2006, Stradley filed petitions to vacate Naythons' final adjudication, which Naythons issued on October 3, 2006, but dated July 25, 2006. 3d Cir. J.A. 0055

In an October 3, 2006, memorandum accompanying his final adjudication, Naythons specifically represented that there was no factual basis for recusal because he had completed the final adjudication **before** he allegedly learned of the anonymous threat on July 27, 2006. 3d Cir. J.A. 0797-0798. However, Naythons' final adjudication referred to a dispute about amendments to church by-laws, which were not reduced to writing until after July 27, 2006 (the date when Naythons claimed he had first learned of the anonymous threat). 3d Cir. J.A. 0049-0050.

Accordingly, Stradley argued in these petitions to vacate that by falsely representing that he had completed his final adjudication by July 25, 2006 and improperly backdating it, Naythons engaged in arbitrator "misconduct, dishonesty, fraud and bias," an unmistakable reference to the legal standard governing vacatur of arbitration awards under 42 Pa. C.S.A. § 7341. 3d Cir. J.A. 0055, 0247-0256.

These petitions are now moot. On January 31, 2008, a unanimous, three-member panel of the Commonwealth Court of Pennsylvania granted a previously filed petition by Stradley to vacate Naythons' initial arbitration adjudication and ruled that Naythons "clearly went beyond the scope of his authority" and ordered vacatur

of Naythons' initial adjudication and all subsequent adjudications and orders. *See* 3d Cir. J.A. 1157, 1165-1166. The Supreme Court of Pennsylvania subsequently denied Patterson's petition to appeal that order. *Patterson v. Shelton*, No. 129 EAL 2008, 2008 WL 4567109 (Pa. Oct. 14, 2008).

C. Proceedings in the District Court and Court of Appeals

In a well-reasoned and thoughtful opinion, the district court granted Stradley's motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure and dismissed Naythons' Complaint against Stradley with prejudice. 3d Cir. J.A. 0026. The district court held that arbitrators lack standing to bring such claims because petitions seeking to overturn an arbitrator's decisions cannot, as a matter of law, be regarded as a use of legal process against the arbitrator for purposes of satisfying an essential element of an abuse of process claim. 3d Cir. J.A. 0009-0012, 0015. The district court emphasized that the system of judicial review sufficiently protects arbitrators (and judges) from baseless criticisms or allegations of misconduct and that allowing Naythons' tort claims against counsel to proceed would chill zealous advocacy. 3d Cir. J.A. 0013-0015.

As an additional basis for dismissing the abuse of process claim, the district court found that Naythons failed to allege a second element, the perversion of process. 3d Cir. J.A. 0015-0018. The district court held that, among other deficiencies, the Complaint failed to allege that Stradley did anything other than seek judicial review, a legitimate use of process. 3d Cir. J.A. 0016-0018.

Finally, the district court ruled that Naythons failed to allege two essential elements of the wrongful use of civil proceedings claim because Stradley did not initiate a civil proceeding against Naythons that terminated in his favor. 3d Cir. J.A. 0023.

The United States Court of Appeals for the Third Circuit affirmed the district court's dismissal of Naythons' Complaint against Stradley. Pet'r App. at A6. In explaining the basis for its ruling, the Third Circuit agreed that Stradley did not use legal process against Naythons when Stradley filed petitions seeking judicial review of Naythons' arbitration decisions. *See* Pet'r App. at A5. The Third Circuit emphasized, as the district court did, that Naythons was the arbitrator in the underlying state court proceeding, not a party to the action. Pet'r App. at A5. The Third Circuit then explained that allowing Naythons to maintain these claims against a law firm would abrogate the doctrine of judicial privilege. Pet'r App. at A5.

Seemingly unable to accept any adverse ruling,[1] Naythons now requests that this Court grant his Petition for Writ of Certiorari ("Petition") and review the Third Circuit's narrow application of Pennsylvania law to a set of highly-specific facts.

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1. For example, Naythons accused a judge in the underlying state court proceeding of violating his constitutional rights after the judge struck Naythons' response to Stradley's recusal petition on the basis that Naythons was not a party to the proceeding, but rather an arbitrator who served in a quasi-judicial capacity. 3d Cir. J.A. 0197, 0797. Similarly, Naythons attempts to discredit the district court judge's and Third Circuit panel's rulings by suggesting that they lack the requisite experience to hear this case. *See* Pet. for Writ of Cert. at n.13.

For the reasons discussed below, Stradley respectfully requests that this Court deny the Petition.

REASONS FOR DENYING THE PETITION

A. This Case Does Not Involve Any Federal Issue That Would Justify United States Supreme Court Review.

In an attempt to drum up a federal issue, where none exists, Naythons clumsily attempts to characterize this appeal as presenting "a recurring issue of federalism." Pet. for Writ of Cert. at 3. Aside from asserting this bold statement, he fails to identify this "recurring issue of federalism." Rather, he appears to suggest that this issue arises anytime a federal court rules on a state-law issue that a state's highest court has not yet addressed. *See* Pet. for Writ of Cert. at i, 3, 10, 11. In effect, Naythons asks this Court to grant certiorari to review the Third Circuit's application of Pennsylvania law. *See* Pet. for Writ of Cert. at 17 ("The Court should grant certiorari to discuss the circumstances in which it will override an erroneous and unduly adventuresome interpretation of state law."). This is not a compelling or even a colorable reason to grant the Petition.

While this Court certainly can review a lower federal court's application of state-law, a petition for writ of certiorari is rarely granted on the basis that the lower federal court misapplied the law. *See* Supreme Ct. R. 10. In fact, even the cases cited by Naythons recognize that this Court generally defers to the lower federal court's interpretation of state-law. *See, e.g., Brockett v.*

Spokane Arcades, Inc., 472 U.S. 491, 500 (1985) ("Normally, however we defer to the construction of a state statute given it by the lower federal courts. We do so not only to 'render unnecessary review of their decisions in this respect,' but also to reflect our belief that district courts and courts of appeals are better schooled in and more able to interpret the laws of their respective States.") (internal citations omitted); *Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) ("We emphasize, however, that, standing alone, a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review.").

Nor is this case similar to the cases cited by Naythons where this Court exercised jurisdiction to resolve a circuit split. *See, e.g.*, *Haring*, 462 U.S. at 311 & n.2; *Helvering v. Stuart*, 317 U.S. 154, 161 (1942). In fact, we are not aware of any other federal (or state) case in which an arbitrator has ever attempted to bring claims for abuse of process or wrongful use of civil proceedings against a law firm based on court filings seeking judicial review of the arbitrator's decisions.

There is simply no federal issue that would justify this Court's extraordinary review.

B. The Third Circuit Narrowly Applied Pennsylvania Law To A Set Of Highly-Specific Facts.

Naythons also suggests that the Court grant this Petition because the Third Circuit's ruling eviscerates the state-law claims for abuse of process and wrongful use of civil proceedings. *See* Pet. for Writ of Cert. at i, 15.

However, the Third Circuit's ruling does no such thing. The Third Circuit narrowly applied Pennsylvania law to the specific facts of this case. In explaining its basis for affirming the district court's dismissal, the Third Circuit agreed that Stradley did not use legal process against Naythons. Pet'r App. at A5. It then emphasized the key fact underlying its decision — that "Naythons was the arbitrator in the state proceeding, not a party to the action." Pet'r App. at A5. Only after reiterating the importance of this key fact did the Third Circuit conclude that allowing Naythons to sustain these claims would abrogate the doctrine of judicial privilege. Pet'r App. at A5. Thus, at most the Third Circuit ruled that in this case, the arbitrator could not maintain a claim for abuse of process or wrongful use of civil proceedings against a law firm for allegations contained in arbitration-related court filings that sought the arbitrator's recusal and vacatur of the arbitrator's adjudication.

If there were any doubt that the Third Circuit's ruling was limited to the highly-specific (and unusual) facts of this case, the Third Circuit's prior rulings make clear that the judicial privilege does not automatically bar all abuse of process and wrongful use of civil proceedings claims. *See Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 312 (3d Cir. 2003); *Silver v. Mendel*, 894 F.2d 598, 604 (3d Cir. 1990). Although Naythons acknowledged these prior Third Circuit cases in his other briefs, these cases are conspicuously absent from this Petition. *See, e.g.*, Plaintiff's Mem. of Law in Supp. of Opp'n to Defs.' Mot. to Dismiss Compl. at 47; Br. of Appellant at 40; Pet. for Rehearing *En Banc* of Appellant at 1, 2.

Even Naythons' own framing of the issue — whether a federal court may extend the judicial privilege "to a legal context where the state courts themselves have not applied it" —underscores the fact-specific nature of the Third Circuit's ruling. Pet. for Writ of Cert. at i. Here, the "legal context" is that an arbitrator sought to maintain these claims against a law firm for allegations contained in the law firm's arbitration-related court filings. And it cannot be that Naythons is suggesting that the Pennsylvania courts have never applied the judicial privilege to wrongful use of civil proceedings or abuse of process claims. *See Passon u. Spritzer*, 419 A.2d 1258, 1259 (Pa. Super. Ct. 1980) (applying judicial privilege and dismissing abuse of process claim, among other claims); *see also* Pet. for Writ of Cert. at 12, 13 (acknowledging that a Pennsylvania court has applied judicial privilege to an abuse of process or wrongful use of civil proceedings claim and citing to *Passon*).

Therefore, any suggestion that the Court ought to grant this Petition to prevent the Third Circuit's ruling from negating these state-law claims is clearly unfounded.

C. This Case Does Not Involve Even A Colorable State-Law Issue That Would Justify United States Supreme Court Review.

Not only does this case fail to implicate any federal issue, it also fails to raise any meritorious state-law issue. The Third Circuit and the district court correctly predicted Pennsylvania law and properly held that Pennsylvania courts would not allow an arbitrator to maintain an action for abuse of process or wrongful use

of civil proceedings against a law firm based on statements in petitions seeking recusal or vacatur of the arbitrator's adjudication.

We are not aware of any Pennsylvania (or any other state) court case where an arbitrator has brought claims for abuse of process or wrongful use of civil proceedings against a law firm based on court filings seeking judicial review of the arbitrator's decisions. Indeed, Naythons has candidly conceded that there is no case law support for allowing an arbitrator to maintain such claims. 3d Cir. J.A. 0012-0013. As such, the Third Circuit's ruling in this case does not conflict with a decision by any state court (or federal court), further underscoring that this is not a case that would justify this Court's extraordinary review.

More fundamentally, it is difficult to imagine that any court would reach a result different than the one adopted by the Third Circuit and the district court. Naythons, an experienced lawyer and former Magistrate Judge of the United States District Court for the Eastern District of Pennsylvania, should not have filed this lawsuit. Public policy clearly prohibits allowing an arbitrator to maintain an action for abuse of process or wrongful use of civil proceedings against a law firm that files petitions seeking judicial review of the arbitrator's decisions. Naythons' attempt to portray the result reached by the Third Circuit as an aberration or distortion of Pennsylvania law ignores the complete absence of any legal basis for his claims against Stradley.

CONCLUSION

For all of the foregoing reasons, Stradley respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOSEPH C. CRAWFORD
Counsel of Record
ANDREA TOY OHTA
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

Attorneys for Respondents